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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			EXAMINER	
			FERRIS III, FRED O	
			ART UNIT	PAPER NUMBER
			2128	

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	09/911,414	
Examiner	CAMBRIDGE, RODNEY D.	
Fred Ferris	Art Unit 2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 April 2005.
2a) This action is FINAL. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-37 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-37 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
10) The drawing(s) filed on 23 July 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

1. *Claims 1-37 have been presented for examination based on applicant's amendment filed on 28 April 2005. Claims 1-37 remain rejected by the examiner.*

Response to Arguments

2. *Applicant's arguments filed 28 April 2005 have been fully considered but they are not persuasive.*

Regarding applicant's response to 103(a) rejection: The examiner submits that applicant's amendment to independent claims 1, 20, and 27 does not render the claimed invention non-obvious over the prior art. In a nutshell, applicants amended claim language merely requires that the central server sends a new antivirus update file to the user when a new antivirus file not currently in the user database is detected, and that the user computer sends a new antivirus file to the central computer if it determines the new antivirus file is not already in the antivirus database of the central computer. The examiner first notes that a skilled artisan would be puzzled by the language of the amended claims since, from the recitation "send the new antivirus file to the central service computer to update the virus", it appears that the "virus" itself gets updated. The examiner assumes that applicants intended the meaning of the claim language to reflect the existence of a new virus being detected and subsequently updated by the user computer in the antivirus database of the central computer. This issue notwithstanding, the examiner submits that these claimed limitations (i.e. configuring a central computer and user computer to send new antivirus files to other central

*computers and user computers) are generally standard features available in commercial antivirus products such as McAfee (disclosed in applicant's specification on page 5, line 13, and in prior art Hodges, Background) McAfee VirusScan 4.5, for example, provides features which allow for the detection of new viruses at the local computer level, and subsequent notification central administrator using the programmable Orchestrator feature for configuring automatic antivirus file updates, scans, and DAT file updates. (See: McAfee VirusScan 4.5, Product Description, page 2, Central Policy Reporting and Advanced Enterprise Reporting, for example) Hence, a skilled artisan would have known to use the McAfee Orchestrator programmable configuration features to realize the realize the claimed elements relating to configuring a central computer and user computer to send new antivirus files to other central computers and user computers in updating the antivirus database. (See: "epolicy Orchestrator" Product Guide, Version 2.0, pp. 11-18) Regarding applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The examiner therefore maintains the 103(a) rejection of claims 1-37.*

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 4. Claims 1-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,269,456 issued to Hodges et al in view of U.S. Patent 6,327,594 issued to Van Huben et al.**

Regarding independent claims 1, 20, and 27: Hodges teaches a method, system, and computer code, for maintaining and updating antivirus files within a computer network consisting of user computers, central service computer, and antivirus server.
(Abstract, Summary of Invention, Figs. 3, 4, 8, 10, 12) Hodges teaches the elements of the claimed limitations of the present invention as follows:

- method/system/code for maintaining updated antivirus files in computer network with, computer & central service computer having antivirus database, network connected to antivirus server: Hodges teaches updating antivirus files in a computer network (CL4-L53-67) inclusive of a central service computer having the antivirus database (CL15-L22) and a network connected to an antivirus server (CL9-L62 to CL10-L11, Fig. 7).

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- receiving new antivirus file (database) at user computer and central service computer and updating the computer's antivirus database: Hodges teaches receiving new antivirus files in a database (CL7-L45-63, Fig. 4) at user computer and central service computer (CL7-L1-3) and subsequently updating the computer's antivirus database (CL9-L53-55, CL9-L62-67, Fig. 7).

memory for temporary antivirus storage: The system disclosed by Hodges is obviously inclusive of memory for temporary storage of antivirus files (the system disclosed in Figs. 3 and 10 are obviously inclusive of RAM memory).

- where the central service computer and user computer are configured to send new antivirus file to other central service computer and user computer to update the antivirus database: Hodges discloses sending new antivirus files to the service computer and and user computer in updating the antivirus database (CL7-L1-3, 45-63, CL9-L53-55, 62-67, Figs. 4 and 7).

Hodges does not explicitly disclose comparing databases between a user computer and a host (server) computer system.

Van Huben teaches comparing the databases between central (host) computer and user (client) computer to determine if databases require updating (i.e. new files). (Abstract, Summary, Figs. 3a-4a) Van Huben teaches the elements of the claimed limitations of the present invention as follows:

- comparing antivirus databases of central service computer (application) and user computer to determine if databases contain new antivirus file not contained within the other database: Van Huben teaches comparing databases between central (host) computer and user computer to determine if databases require updating of new files. (CL4-L18-33, especially L29-32)

It would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to modify the teachings of Hodges relating to updating an antivirus database over a network, with the teachings of Van Huben relating to comparing databases between a client and central server, to realize the claimed invention. An obvious motivation exists since, in this case, the Hodges reference teaches to the Van Huben reference, and the Van Huben reference teaches to the Hodges reference. Specifically, both Hodges and Van Huben teach the maintaining and updating databases and are used in the same technological arena as noted above. Hodges teaches to Van Huben because Hodges discloses that client databases require frequent updating from the central server (See: Hodges CL3-L51). Van Huben teaches to Hodges because Van Huben specifically teaches the means for comparing databases between a central server and a client (user) computer to facilitate updating. (See: Van Huben: CL4-L29-32) Further, the level of skill required by an artisan to realize the claimed limitations of the present invention is clearly established by both references. (See: Hodges/Van Huben, Background) Accordingly, a skilled artisan having access to the teachings of Hodges and Van Huben, would have knowingly modified the teachings

of Hodges with the teachings of Van Huben (or visa versa) to realize the claimed elements of the present invention.

Per dependent claim 2-4, and 21-24: Hodges teaches a network with multiple users connected to a central service computer and an antivirus database for obtaining antivirus files (CL7-L1-3, 45-63, CL9-L53-55, 62-67, Figs. 4 and 7).

Per dependent claims 5 and 6: Hodges teaches a central server connected to the Internet and hosting a web site. (CL2-L51, Figs. 8, 10)

Per dependent claims 7-11, 14, 16-18, 24, 25, 31, 32: Hodges teaches notifying server of user update requirements (CL9-L53-55, CL9-L62-67, Fig. 7), new virus definitions (CL5-41), antivirus signature files (CL8-L51-65, Fig. 5b), automatic file updating (CL5-L29), and version number (CL9-L47, CL16-L27).

Per dependent claims 12-13, 26, 29, and 30: Hodges teaches detecting and cleaning infected data files using newly updated files (CL3-L29-41, Fig. 1).

Per dependent claims 15 and 19: These claims are rendered obvious by the teachings of Van Huben relating to comparing databases between a central server and a client (user) computer to facilitate updating (CL4-L29-32) and hence would have knowingly been incorporated by a skilled artisan using the reasoning previously cited above.

Per dependent claim 28: This claim is rendered obvious by the distribution means disclosed by Hodges that discloses antivirus file distribution by CD-ROM, Internet, etc. (See: CL1-L65 to CL2-L11)

Per dependent claims 33-34: Hодges teaches notifying server of user update requirements (CL9-L53-55, CL9-L62-67, Fig. 7) and new virus definitions (CL5-41). "Waiting" for a request from the central computer before sending a new file would obviously be necessary for synchronization purposes. Van Huben teaches comparing databases between a central server and a client (user) computer to facilitate updating (CL4-L29-32) and hence would have knowingly been incorporated by a skilled artisan using the reasoning previously cited above.

Per dependent claims 35-37: These claims are rendered obvious by the teachings of Van Huben relating to comparing databases between a central server and a client (user) computer to facilitate updating (CL4-L29-32) and hence would have knowingly been incorporated by a skilled artisan using the reasoning previously cited above. Hodges teaches a central server connected to the Internet and hosting a web site. (CL2-L51, Figs. 8, 10)

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Careful consideration should be given prior to applicant's response to this Office Action.

"Surfing the Net for Software Engineering Notes", M. Doernhoefer, ACM SIGSOFT, Software Engineering Notes, Vol. 26, No. 2, March 2001 teaches antivirus database updating.

U.S. Patent 6,151,643 issued to Chang et al updating client databases.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Ferris whose telephone number is 571-272-3778 and whose normal working hours are 8:30am to 5:00pm Monday to Friday. Any inquiry of a general nature relating to the status of this application should be directed to the group receptionist whose telephone number is 571-272-3700. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jean Homere can be reached at 571-272-3780. The Official Fax Number is: (703) 872-9306

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